

In the Matter of Merchant Mariner's Document No. Z-1121401
Issued to: CARLOS V. COX

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1334

CARLOS V. COX

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 20 September 1961, an Examiner of the United States Coast Guard at Jacksonville, Florida suspended Appellant's seaman documents for one month on six months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an oiler on board the United States SS LA SALLE under authority of the document above described, on 17 August 1961, Appellant assaulted and battered Fourth Assistant Engineer Milam.

At the hearing, Appellant was represented by counsel who entered a plea of not guilty to the charge and specification on behalf of Appellant.

The Investigating Officer introduced in evidence the testimony of Engineer Milam and an alleged copy of an entry in the ship's Official Logbook.

Appellant was the only other witness who testified at the hearing. Appellant denied that he struck Milam on 17 August 1961 or any other date. Appellant testified that he was in the lower engine room but did not see Milam at the time of the alleged incident; when he was called to the Master's quarters, Appellant was curious as to the reason but he did not inquire even when the Master asked Appellant, "What was the incident about down in the engine room?"; Appellant simply answered that he had not statement to make at the time, because for personal reasons, which he would not disclose, he did not trust anyone in the room; Appellant preferred not to express his reasons why he was conspired against but he did not feel that Milam was totally to blame; Appellant never accused Milam of having homosexual tendencies.

FINDINGS OF FACT

On 17 August 1961, Appellant was serving as an oiler on board

the United States SS LA SALLE and acting under authority of his document while the ship was at sea.

About 1210 on this date, Fourth Assistant Engineer Milam went to the lower engine room in the performance of his duties before going off watch. After Milam was there a few minutes, Appellant addressed him with foul language, made an indecent proposal relating to homosexuality, and struck Milam a slight blow on the right side of the jaw. Milam picked up a pair of pipe thongs, hit Appellant on the arm, and the latter walked away. Neither seaman was injured. Appellant is a younger and larger man than Milan.

Some animosity had occurred between these two seamen on a prior occasion during this voyage which started in May 1961. Ill feeling by Milam toward Appellant is also indicated by the fact that there had been a rumor on the ship for a couple of weeks that Milam had homosexual tendencies and he thought Appellant had started this rumor.

When Milam had finished his work shortly after having been hit by Appellant, Milam reported the incident to the Chief Engineer and they reported it to the Master. Appellant was called to the Master's quarters at approximately 1300 and asked by the Master about the incident in the engine room. No details as to what the "incident" consisted of were furnished. Appellant answered that he did not have any statement to make at the time. The same question and answer were repeated. The Master then told Appellant that he was accused of hitting Milam. Appellant again stated that he had no statement to make at the time.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the decision is not supported by the evidence but is contrary to the evidence and the law.

The alleged copy of the logbook entry is not reliable and the persons quoted in the entry were available to appear as witnesses.

The record shows that Appellant answered the Master as he did because Appellant had been told about a fight on the ship and he suspected that he was accused of being a participant. Also, Appellant had a constitutional right not to make a statement. The burden of proof is on the Government.

The Examiner indulged in speculation in rejecting Appellant's explanation which implied that there was a conspiracy against him

on the ship.

The Examiner expressed doubt that either seaman gave the complete story of what happened. This doubt should have been resolved in favor of Appellant.

The record clearly shows that the alleged victim is not in full possession of his mental faculties and that he evaded every material question by counsel and the examiner.

Appellant requests that the decision be reversed and the order be vacated.

APPEARANCE: Joseph B. Bergen, Esquire, of Savannah, Georgia, of Counsel.

OPINION

The Examiner stated that the decision in this case rested entirely on the credibility of the two witnesses. He accepted Milam's testimony as true and rejected Appellant's for two reasons: the absence of any reasonable explanation why Milam would bring false charges against Appellant, and because it was not logical or natural for Appellant to reply to the Master that Appellant had no statement to make rather than to ask the Master what he was talking about when he referred to an incident in the engine room. Since there is no basis for rejecting the Examiner's findings as to credibility, his decision will be affirmed.

With respect to the first of the above two reasons, Appellant contends that the Examiner indulged in speculation to overcome the testimony that Appellant was charged with this offense as the result of a conspiracy against Appellant. Although this is so, it is equally true that Appellant did not submit any reason to support his statements that he distrusted members of the crew and suspected that they conspired against him. Hence, Appellant's explanation for Milam's conduct amounts to nothing more than unfounded suspicion so far as the record shows.

Concerning the other reason given for not believing Appellant, it is contended that Appellant answered as he did because he had been told about a fight before he was called to the Master's quarters and he had the right not to make a statement. It is not disputed that Appellant had a perfect right not to make a statement if he interpreted the Master's first question as an accusation of participating in a fight. But this contention does not agree with Appellant's definite testimony at the hearing that he was completely without knowledge as to why he was called before the Master. On the basis of this testimony, there was no reason for

invoking the privilege not to make a statement. Consequently, this contention on appeal agrees, in effect, with the Examiner's rejection of Appellant's testimony as incredible on the ground that his answer to the Master indicated that Appellant did know what the Master was talking about although Appellant denied this in his testimony.

Having rejected Appellant's testimony, the testimony of Milam constitutes substantial evidence to prove the assault and battery despite the Examiner's doubt that the complete story was told at the hearing. The Examiner arrived at the conclusion that the offense was committed without regard to the motive which could be speculated on at length to the benefit and detriment of both parties in view of the evidence concerning homosexuality and the undisclosed personal reasons of the Appellant. Such speculation is not within the scope of this decision. The alleged logbook entry was not relied on by the Examiner in his decision.

Relative to the value of Milam's testimony as a witness, the contentions on appeal, that Milam evaded answering every material question and that Milam's testimony shows him to be a mentally unstable individual, are completely without merit.

ORDER

The order of the Examiner dated at Jacksonville, Florida, on 20 September 1961, is AFFIRMED.

E. J. ROLAND
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 16th day of August 1962.